

1 4. Prior to November 14, 2007 the Trustee and/or his attorney were advised that most of
2 the personal property located at 900 Welty Road ("Welty Premises") was not owned by the estate
3 but was owned by third parties, including movants herein. The Trustee was so advised by Brian
4 Federico, movant herein, and the debtor himself, Paul Federico. The Trustee was further notified of
5 the estate's lack of title to the personal property by the following:

- 6 A. The opposition filed October 16, 2007 to the Trustee's motion to sell which included
7 the objection that the estate had no interest in the auction property, citing *Moldo vs.*
8 *Clark* 266 Br. 163 (BAP 9th cir. 2001) which prohibits sale of property pursuant to 11
9 USC §363 without first determining that it is in fact property of the bankruptcy
10 estate. Exhibit 1 to the Declaration of David F. Anderson filed herewith.
- 11 B. The Declaration of Brian Federico filed October 16, 2007 in support of his opposition
12 in which he states that he is the owner of most of the items to be sold. Exhibit 2 to
13 the Declaration to David F. Anderson filed herewith.
- 14 C. At all times pertinent herein, the Trustee was advised that certain records were
15 located inside some of the containers on the Welty Premises and that in order to
16 demonstrate title on behalf of movants it would be necessary to have access to the
17 trailers and other storage facilities on site. These requests were denied by the Trustee.

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19 5. At all times pertinent herein the Trustee was advised that most of the property on the
20 Welty Premises belonged to Brian Federico who moved the personal property there after being
21 cited for having excess equipment on his own premises located about two miles away.

22 6. The debtor had no interest in the Welty Premises at any time pertinent herein.

23 7. On November 14, 2007 over the objection of Brian Federico, the Trustee obtained an
24 order allowing him to sale the personal property on the Welty Premises which he claimed as part of
25 the estate despite having been advised to the contrary.

26 8. One of the objections raised to Trustee's motion to sell the property was that it was
27 not filed as an adversary proceeding as it should have been pursuant to FRBP 7001(2). At that time
28 movant, Brian Federico, further objected that an order otherwise issued to approve a sale was void.

1 9. On or before January 19, 2008 the Trustee or his counsel received further objection to
2 the auction sale set for January 19, 2008 pursuant to the order approving the sale. The formal
3 objection included:

4 A. The letter dated January 17, 2008 from the undersigned counsel to the Trustee's
5 attorney Oleksa advising that most of the property was not that of the estate and that
6 the Trustee operates at his peril in proceeding with the auction. The letter included
7 evidence of ownership of certain items of Brian and/or William Federico. Exhibit
8 "3" to the Declaration of David F. Anderson filed herewith.

9 B. A second letter to the Trustee's attorney dated January 18, 2008. Exhibit "5" to the
10 Declaration of David F. Anderson filed herewith.

11 C. Over three emails from Paul Federico, the debtor, to the Trustee and/or auctioneer
12 over the period of January 16, 17, and 18, 2008 advising that the sale should not
13 proceed until ownership has been addressed. Exhibits "1", "2" and "3" to the
14 Declaration of Paul Federico filed herewith.

15 D. In addition to these written communications, various oral notices were given to the
16 Trustee and/or auctioneer prior to the auction and the day of the auction itself by
17 Brian and/or Paul Federico. Declarations of Brian Federico and Paul Federico filed
18 herewith.

19 10. Despite the objections, the Trustee proceeded with the auction sale as planned and
20 movants' items of personally property were wrongfully sold to the public.

21 11. Movants request an order pursuant to FRCP 60(b)(4) as incorporated in FRBP 9024
22 setting aside the order and judgment approving the sale as void for lack of due process and contrary
23 to the Federal Rules of Bankruptcy Procedure.

24 Wherefore, movants pray for judgment as follows:

25 1. That the order filed November 21, 2007 and any judgment thereon be declared null
26 and void;

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2. For such other and further relief as the court may deem proper.

Respectfully submitted.

Dated: June 27, 2008

HAUSER & MOUZES
A Professional Law Corporation

/s/ David F. Anderson

By: DAVID F. ANDERSON, Attorney for
Brian Federico, William Federico, Douglas
Brown and Terri Brown